

SENATE BILL NO. 430

INTRODUCED BY HAMLETT, GEBHARDT

BY REQUEST OF THE SENATE TAXATION STANDING COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT REMOVING THE REQUIREMENT THAT COAL MINE OPERATORS REPORT TONS OF COAL SOLD TO PURCHASERS; CLARIFYING THE PROCEDURE TO COMPUTE OIL AND NATURAL GAS TAX IN ABSENCE OF A STATEMENT; CLARIFYING WHEN THE PENALTY PROVISIONS FOR DELINQUENT BENTONITE TAX AND THE WHOLESALE ENERGY TRANSACTION TAX RETURNS APPLY; DIRECTING INITIAL CIGARETTE TAX APPEALS TO THE DEPARTMENT OF REVENUE RATHER THAN TO THE STATE TAX APPEAL BOARD; AMENDING SECTIONS 15-35-104, 15-36-313, 15-39-105, 15-72-112, 16-11-105, 16-11-149, AND 72-3-1006, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 15-35-104, MCA, is amended to read:

"15-35-104. Quarterly statement and payment of tax. Each coal mine operator shall compute the severance tax due on ~~each quarter-year's worth of production~~ for each calendar quarter on forms prescribed by the department. The statement ~~shall indicate~~ must show the tonnage produced, the average Btu value of the production, the contract sales price received for the production, and ~~such other information as that~~ the department may require. ~~Each coal mine operator shall provide a statement of the tons of coal sold to each purchaser for the quarter.~~ The completed form ~~in duplicate~~, with the tax payment, ~~shall~~ must be delivered to the department not later than 30 days following the close of the quarter. The form ~~shall~~ must be signed by the operator if the operator is an individual or by an officer of the coal mine operator if the operator is a business entity. A person operating more than one coal mine in this state may include all of ~~his~~ the person's mines in one statement. The department may grant a reasonable extension of time for filing statements and payment of taxes due upon good cause shown ~~therefor.~~"

Section 2. Section 15-36-313, MCA, is amended to read:

"15-36-313. Procedure to compute tax in absence of statement -- estimation of tax -- failure to file

1 **penalty and interest.** (1) If the operator fails to file any statement required by 15-36-311 within the time required,
2 the department shall, ~~immediately after the time has expired~~, ascertain the number of barrels of oil or cubic feet
3 of gas produced and sold by the person in this state during the quarter and during each month of the quarter. The
4 department also shall determine the average value of the barrels of oil produced and sold during each month or
5 the average value of cubic feet of gas produced and sold during each month and fix the amount of the taxes due
6 from the person for the quarter.

7 (2) The department shall impose penalty and interest as provided in 15-1-216. The department shall mail
8 to the taxpayer a notice, pursuant to 15-1-211, of the tax, penalty, and interest proposed to be assessed. The
9 taxpayer may seek review of the determination pursuant to 15-1-211. The notice must contain a statement that
10 if payment is not made, a warrant for distraint may be filed. The department may waive any penalty pursuant to
11 15-1-206."

12
13 **Section 3.** Section 15-39-105, MCA, is amended to read:

14 **"15-39-105. Penalties and interest for violation.** (1) (a) A person who fails to file a statement as
15 required by 15-39-102 must be assessed a penalty as provided in 15-1-216. The department may waive the
16 penalty as provided in 15-1-206.

17 (b) A person who fails to file the statement required by 15-39-102 and to pay the tax on or before the due
18 date must be assessed a penalty and interest as provided in 15-1-216. The department may waive any penalty
19 pursuant to 15-1-206.

20 (2) A person who purposely fails to pay the tax when due must be assessed an additional penalty as
21 provided in 15-1-216(2)."

22
23 **Section 4.** Section 15-72-112, MCA, is amended to read:

24 **"15-72-112. Penalties and interest for violation.** (1) (a) A person who fails to file a return as required
25 by 15-72-110 must be assessed a penalty as provided in 15-1-216. The department may waive the penalty as
26 provided in 15-1-206.

27 (b) A person who fails to file the return required by 15-72-110 and to pay the tax on or before the due
28 date must be assessed penalty and interest as provided in 15-1-216. The department may waive any penalty
29 pursuant to 15-1-206.

30 (2) A person who purposely fails to pay the tax when due must be assessed an additional penalty as

provided in 15-1-216."

Section 5. Section 16-11-105, MCA, is amended to read:

"16-11-105. Rulemaking authority of department of justice. The department of justice may adopt rules to implement 16-11-103, 16-11-118, 16-11-124, 16-11-141, 16-11-142, and 16-11-147, ~~and 16-11-149.~~"

Section 6. Section 16-11-149, MCA, is amended to read:

"16-11-149. Hearings before ~~state tax appeal board~~ department. (1) A person aggrieved by any action of the department or its authorized agents taken to enforce the tax provisions of this part, except for a revocation of a license pursuant to 16-11-144, may apply to the ~~state tax appeal board~~ department, in writing, for a hearing or rehearing within 30 days after the action of the department or its authorized agents.

(2) The ~~board~~ department shall promptly consider the application, set the application for hearing, and notify the applicant of the time and place fixed for the hearing or rehearing, which may be at its office or in the county of the applicant. After the hearing or rehearing, the ~~board~~ department may make any further or other order on the grounds that it may consider proper and lawful and shall furnish a copy to the applicant.

(3) The department, on its own initiative, may order a contested case hearing on any matter concerned with licensing, as defined in 2-4-102, in connection with the administration of this part upon at least 10 days' notice in writing to the person or persons to be investigated.

(4) A person may appeal a final order of the department to the state tax appeal board as provided in 15-2-302."

Section 7. Section 72-3-1006, MCA, is amended to read:

"72-3-1006. Certificate. (1) In probate proceedings under this code requiring the filing of a duplicate United States estate tax return with the department of revenue pursuant to 72-16-906, a final distribution to successors may not be made and petitions may not be granted under 72-3-1001, 72-3-1002, 72-3-1003, or 72-3-1004, unless there has been filed with the clerk:

(a) a certificate from the department of revenue stating that any estate tax due on the assets of the estate has been paid or that no tax is payable; or

(b) an agreement with the department of revenue for extension of time for payment of estate taxes.

(2) This section does not prohibit a partial distribution that may become necessary in the course of

1 administration."

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3 NEW SECTION. **Section 8. Retroactive applicability.** [This act] applies retroactively, within the
4 meaning of 1-2-109, to tax periods beginning after December 31, ~~2009~~ 2008.

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